

### **REMARKS**

This present Response is being filed in reply to the Office Action dated December 1, 2006.

By the present amendment, claims 1, 4, 7, 10, 11, 15, and 18 have been amended and claims 2-3, 6, 8, 12-14, 21 have been canceled without prejudice. Claims 1, 4, 5, 7, 9-11, and 15-20 are pending in the application.

Claim 1 has been amended to recite the subject matter of canceled claim canceled 3, which is indicated to be allowable by the Examiner. Claim 4, which is indicated to be allowable by the Examiner, has been rewritten in independent form. Claim 7 has been amended to recite the subject matter of canceled claim 8, which is indicated to be allowable by the Examiner. Claim 11 has been amended to recite the subject matter of canceled claim 14, which is indicated to be allowable by the Examiner. In addition, claims 7, 10, 15 and 18 have been amended to correct typographical errors and/or claim dependencies. Support for the claim amendments can be found throughout the specification and drawings, including the claims as originally filed. No new matter has been added. The amendment of the claims should in no way be construed to be an acquiescence to any of the rejections. The amendment of the claims is being made solely to expedite prosecution of the above-identified patent application. Applicants reserve the option to further prosecute the same or similar claims in the present or subsequent patent applications.

#### ***Allowable Subject Matter***

Applicants wish to thank the Examiner for the careful review of the claims and the indication that claims 3, 4, 8-10, and 14-17 recite allowable subject matter.

#### ***Claim Objections***

Applicants note with appreciation the withdrawal of the objection to claim 1. Applicants disagree, however, with the Examiner's characterization of the phrase "adapted to couple said body and said inserter shaft, wherein said inserter shaft forces a spinal rod into the rod-receiving portion of said implant" as "solely a functional recitation." Applicants consider the phrase to not be "solely a functional limitation." For example, "adapted to

couple said body and said shaft” describes a structural relationship between the collar and the body and the shaft of the tool.

***Rejection of Claims 1, 2, 5, 7, 11, 19 and 20 under 35 U.S.C. § 102***

The Office Action rejected claims 1, 2, 5, 7, 11, 19 and 20 under 35 U.S.C. § 102(b) as being anticipated by Bryant (U.S. Patent No. 5,649,931). Applicants respectfully traverse the rejections for the reasons set forth below.

Claims 1, 2, & 5

Claim 1 has been amended to recite the subject matter of canceled claim canceled 3, which is indicated to be allowable by the Examiner, thereby placing claim 1 and claim 5 dependent thereon in condition for allowance. Claim 2 has been canceled.

Claim 7

Claim 7 has been amended to recite the subject matter of canceled claim 8, which is indicated to be allowable by the Examiner, thereby placing claim 7 in condition for allowance.

Claims 11 & 19

Claim 11 has been amended to recite the subject matter of canceled claim 14, which is indicated to be allowable by the Examiner, thereby placing claim 11 and claim 19 dependent thereon in condition for allowance.

Claim 20

Claim 20 has been canceled.

***Rejection of Claims 11-13 and 18 under 35 U.S.C. § 102***

The Office Action rejected claims 11-13 and 18 under 35 U.S.C. § 102(b) as being anticipated by Becker (U.S. Patent No. 2,248,054). Applicant respectfully traverses this rejection for the reasons set forth below.

Claim 11 has been amended to recite the subject matter of canceled claim 14, which is indicated to be allowable by the Examiner, thereby placing claim 11 and claim 18 dependent thereon in condition for allowance. Claims 12 and 13 have been canceled.

***Conclusion***

In view of the remarks set forth above, it is respectfully submitted that this application is in condition for allowance. Accordingly, allowance is requested. If there are any remaining issues or the Examiner believes that a telephone conversation with the Applicants' attorney would be helpful in expediting the prosecution of the application, the Examiner is invited to call the undersigned at (508) 880-8488.

Respectfully submitted,

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